IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 18466 of 2004(W)

PETITIONER:

K.M. KELAPPAN, KODICHEERANTAVIDE
MEETHAL HOUSE, P.O. IRINGAL,
KOZHIKODE DISTRICT.

BY ADV. SRI.K.CHANDRASEKHARAN (SR.),
SRI.K.MOHANAKANNAN.

RESPONDENTS:
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1. **THE STATE OF KERALA, NOTICE FOR WHOM MAY BE SERVED ON THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, KOZHIKODE, CIVIL STATION, KOZHIKODE.**

BY GOVERNMENT PLEADER SMT. N. SUDHA DEVI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18466/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PETITIONER'S APPLICATION DTD. 08/08/1989 ADDRESSED TO THE CHIEF MINISTER OF KERALA, TRIVANDRUM.

EXT.P.1.A: COPY OF THE PETITIONER'S APPLICATION IN PROPER FORM SUBMITTED ALONG WITH EXHIBIT P.1. TO TH COLLECTOR DT. NIL.

EXT.P.2: COPY OF THE REMINDR AND REPRESENTATION DTD. 04/1993 SUBMITTED BY THE PETITIONER TO THE CHIEF MINISTER/ DISTRICT COLLECTOR.

EXT.P.3: COPY OF THE CERTIFICATE OF IMPRISONMENT PRODUCED BY SHRI. KUNIYIL KRISHNAN DTD. NIL.

EXT.P.4: COPY OF THE CERTIFICATE OF IMPRISONMENT DTD. 16/04/2003 OF V.M. DAMODARAN.

EXT.P.4.A: COPY OF THE CERTIFICATE OF IMPRISONMENT OF SHRI. DAMODARAN DT. 18/07/84.

EXT.P.5: COPY OF THE CERTIFICATE GIVEN TO SHRI. P.M. KUNHIRAMAN NAMBIAR, EX. M.L.A. DTD. 28/03/1985.

EXT.P.6: COPY OF THE CERTIFICATE GIVEN TO HE PETITIONER BY SHRI.P.M. KUNHIRAMAN NAMBIAR DT. NIL.

EXT.P.7: COPY OF THE WRITE UP IN “KAZHCHAPAD” PAGE `MALAYALA MANORAMA' DT. 26/11/98.

EXT.P.8: COPY OF THE CERTIFICATE OF SHRI. KIZHAKKEDATH KUNHIRAMAN ANOTHER FREEDOM FIGHTER DTD. 10/07/1989.

EXT.P.9: COPY OF THE CERTIFICATE DTD. 18/02/1991 ISSUED BY THE SUB DIVISIONAL MAGISTRATE, THALASSERY.

EXT.P.10: COPY OF THE PETITIONER'S REPRESENTATION DTD. 17/04/2003 TO THE GOVERNMENT.

EXT.P.11: COPY OF THE PETITIONER'S REPRESENTATION DTD. 06/06/2003 TO THE GOVERNMENT.

EXT.P.12: COPY OF THE 2ND RESPONDENT'S COMMUNICATION TO PETITIONER DTD. 11/07/2003.

W.P.(C). NO.18466/2004:

EXT.P.13: COPY OF THE JUDGMENT DTD. 11/10/1999 IN O.P. NO. 25290/1999.

EXT.P.14: COPY OF THE JUDGMENT IN O.P. NO. 31149/03 DTD. 06/10/2003.

EXT.P.15: COPY OF THE ORDER NO. 522889/03 DTD. 22/11/2003 PASSED BY THE R.2.

EXT.P.16: COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DTD. 13/12/2003.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 18466 of 2004-W.
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Dated this the 18th day of August, 2007.

J U D G M E N T

Aggrieved by the denial of pension under the Kerala Freedom Fighters Pension Rules, the petitioner is before this Court. The order under challenge is Ext.P15.

2. Rejection is based on the fact that he has not produced official records and also due to the fact that he was only having 16 years of age at the time of Quit India Movement and hence the application cannot be considered favourably.

3. The learned counsel for the petitioner submits that the petitioner had filed an application for pension as per Ext.P1 dated 8.8.1989. Ext.P2 is a further representation submitted by him. In the light of the objections taken in Ext.P15 the petitioner's counsel submits that in Ext.P1(a) he has clearly stated that he took part in the National Freedom Struggle during the years from 1942 to 1943. Later in Ext.P2 he has stated various facts in detail in paras.2 and 3 to elaborate his claim as a prominent freedom fighter. He has clearly stated that he had participated in the Quit India Movement from 21.9.1942 to 31.3.1946. He has also stated that he was constrained to go underground since warrant of arrest against him and 12 others were issued

on account of flag hoisting at the Police Maidan Kannur breaking the prohibition orders. Relying upon the certificates issued by Sri.Kuniyil Krishnan, in Ext.P2, he claims grant of pension. Ext.P2(4) is another representation submitted by him before the Hon'ble Chief Minister of Kerala and Ext.P3 is a letter submitted by Sri.Kuniyil Krishnan to the District Collector providing the details about his imprisonment. Exts.P4 and P5 are the certificates issued by two well known freedom fighters Sri.V.M.Dadmodaran and Sri.P.M.Kunhiraman Nambiar. In the said certificates they have stated that the petitioner had remained underground for 6 months from 21.9.1942 to 31.3.1946. Ext.P4(a) is the certificate of imprisonment issued by Shri.V.M.Damodaran. Ext.P9 is the certificate from the Sub Divisional Magistrate, Thalassery stating that the records prior to the year 1960 have already been destroyed and that it is not possible to verify whether a case was charged against Sri.K.M.Kelappan during the year 1942. Ext.P10 is the further representation submitted by the petitioner. He has relied upon the certificates issued by Sri.V.M.Damodaran and Sri.P.M.Kunhiraman Nambiar.

4. In the counter-affidavit the stand taken is that in the form of application the petitioner has given his jail sufferings with reference to the years 1942 and 1943 whereas the certificates issued by the certifiers show that the sufferings are between the years 1942 and 1946. It is, therefore,

contended by the respondents that the period of underground suffering stated by the certifiers do not seem to be correct. It is also averred that in view of Circular dated 31.12.1993 he should have produced documentary evidence by way of official records in support of his claim. It is pointed out that he was only 16 years of age at the time of Quit India Movement.

5. The authorities have lost sight of an important aspect while considering his application. Even though in the application Ext.P1(a) he has stated that the sufferings are between 1942 to 1943, those have been elaborated by Ext.P2 and subsequent representations wherein he had given the period of participation in the Quit India Movement as between 21.9.1942 to 31.3.1946 and he further claimed that on account of the flag hoisting at the Police Maidan, Kannur breaking the prohibitory orders warrant of arrest was issued against him and 12 others. The said aspects have been lost sight when Ext.P15 order was passed. Therefore, it is not a case where the details shown by the certifiers in their certificates and those claimed by the petitioner do not tally. In fact, going by the scheme itself, it is relevant to notice that, in Clause 20(v) the requirement is that the freedom fighters should mention in his application details based on his memory. Merely because there was an omission in Ext.P1(a) it is immaterial in the light of Ext.P2 and other representations I am of the view that the period of sufferings clearly tally with the certificates issued by the certifiers Sri.V.M.Damodaran and

Sri.P.M.Kunhiraman Nambiar. They are well known freedom fighters and are the receipients of Central pension. Going by the scheme what is required is to produce certificates from such well known freedom fighters in the absence of official records. Coupled with the non-availability of record certificate they are liable to be acted upon to consider the application for pension.

6. Therefore the objection taken regarding that Ext.P1(a) does not tally with the certificates issued by the freedom fighters Sri.V.M.Damodaran and Sri.P.M.Kunhiraman Nambiar is in correct. It is a too technical one. The authorities cannot take such a stand in the light of the decision of the Supreme Court reported in *Gurdial Singh v. Union of India* (2001(8) SCC 8). The Apex Court held in para.7 as follows:

> **"The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is**

> **probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence. ”**

7. The counsel for the petitioner also relied upon a decision in *Shoba v. Union of India* [2005(2) KLT (SN) 61 (Case No.73).]. In regard to the question whether the certificate issued by the certifiers who were in jail as regards the underground details of the applicant can be accepted it was held that, 'simply because he was at the relevant time in Jail does not make his personal knowledge unworthy of credence. Personal knowledge need not be as a co-underground sufferer. As a person in the know of the activities of the movement his knowledge regarding the others in the struggle cannot be simply brushed aside on the ground that at the relevant time he was in jail. He was in jail because he was arrested and the other continued to be underground.' Even though it was a case under the Swathantrata Sainik Samman Pension Rules, 1980 the said findings are relevant here.

8. Then the other objection is regarding the age of the petitioner. The conclusion is that as the age of the petitioner is 16, there cannot be warrant of arrest issued against him. There is no authentic records to support this assertion. In the freedom struggle even students from schools and colleges were actively participating. Therefore the claim cannot be rejected on the ground that at that time he was not a major, as no such age barrier is there in the scheme also. His claim is liable to be considered in the

light of the certificates issued by the prominent freedom fighters. Further the circular cannot restrict the provisions of main scheme itself. Therefore the contentions based on the Circular dated 31.12.1993 cannot be accepted.

9. There will be a direction to the 2nd respondent to reconsider the application of the petitioner in the light of the findings rendered above. Appropriate orders shall be passed in the light of the above findings within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-